

# **EXHIBIT 8**

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10  
 11 IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

|                                   |                                  |
|-----------------------------------|----------------------------------|
| 12 MILES INC.                     | ) Civil Action No.               |
|                                   | ) 92 1975 VRW                    |
| 13 Plaintiff,                     | )                                |
| 14                                | )                                |
| 15 v.                             | ) ANSWER, AFFIRMATIVE DEFENSES,  |
|                                   | ) AND COUNTERCLAIM OF ALPHA      |
| 16 GREEN CROSS CORPORATION, and   | ) THERAPEUTIC CORPORATION TO THE |
| 16 ALPHA THERAPEUTIC CORPORATION, | ) AMENDED COMPLAINT FOR PATENT   |
|                                   | ) INFRINGEMENT                   |
| 17                                | )                                |
| 18 Defendant.                     | )                                |
|                                   | )                                |

19  
 20 Alpha Therapeutic Corporation ("Alpha"), answers the Amended  
 21 Complaint of Miles Inc. ("Miles") in like-numbered paragraphs as  
 22 follows:

23 ////  
 24 ////  
 25 ////  
 26 ////  
 27 ////  
 28 ////

The Parties

1  
2 1. Alpha is without sufficient information to admit or deny  
3 the allegations of Paragraph 1 of the Amended Complaint and  
4 therefore denies the allegations.

5  
6 2. Alpha admits that Green Cross Corporation ("Green Cross")  
7 is a Japanese Corporation. Alpha has insufficient information to  
8 admit or deny the other allegation of Paragraph 2 of the Amended  
9 Complaint and therefore denies those allegations.

10 3A. Alpha admits that it is a California corporation having  
11 its principal place of business at 5555 Valley Boulevard, Los  
12 Angeles, California. Alpha denies the other allegations set forth  
13 in the first Paragraph 3 of the Amended Complaint, except states  
14 that Green Cross owns capital stock of Alpha.

Jurisdiction

15  
16 3B. With respect to the allegations of the second Paragraph 3  
17 of the Amended Complaint, Alpha admits that United States District  
18 Courts have jurisdiction of civil actions arising under an Act of  
19 Congress relating to allegations of patent infringement. Alpha  
20 denies having committed any act of infringement.

Claim for Relief

21  
22  
23 4. Alpha admits that U.S. Patent No. 4,396,608 ("the '608  
24 patent") issued on August 2, 1983. Alpha denies that the '608  
25 patent was duly and legally issued. With respect to all other  
26 allegations in Paragraph 4 of the Amended Complaint, Alpha does not

27 ///

28 ///

1 have sufficient knowledge to admit or deny those allegations and  
2 therefore denies the same.

3 5. Alpha admits that U.S. Patent No. 4,499,073 ("the '073  
4 patent") issued on February 12, 1985. Alpha denies that the '703  
5 patent was duly and legally issued. With respect to all other  
6 allegations in Paragraph 5 of the Amended Complaint, Alpha does not  
7 have sufficient knowledge to admit or deny those allegations and  
8 therefore denies the same.

9 6. Alpha denies each and every allegation set forth in  
10 Paragraph 6 of the Amended Complaint.

11 7. Alpha is without sufficient information to admit or deny  
12 the allegations in Paragraph 7 of the Amended Complaint and  
13 therefore denies the allegations.

14 8. Alpha denies each and every allegation set forth in  
15 Paragraph 8 of the Amended Complaint.

16 9. Alpha denies each and every allegation set forth in  
17 Paragraph 9 of the Amended Complaint.

18

19 Alpha's Affirmative Defenses

20 Further answering the Amended Complaint, and as affirmative  
21 defenses to the matters set forth therein, Alpha alleges as follows.

22 10. The Complaint fails to state facts sufficient to  
23 constitute a claim upon which relief may be granted.

24 11. The '608 patent is invalid and unenforceable because it  
25 fails to meet the conditions and requirements for patentability  
26 specified in Title 35 of the United States Code.

27 ////

28 ////

1 12. Alpha has not infringed, induced infringement or  
2 contributed to infringement of the '608 patent.

3 13. The '073 patent is invalid and unenforceable because it  
4 fails to meet the conditions and requirements for patentability  
5 specified in Title 35 of the United States Code.

6 14. Alpha has not infringed, induced infringement or  
7 contributed to infringement of the '073 patent.

8 15. By reasons of positions taken during the prosecution of  
9 the applications which resulted in the '608 and '703 patents,  
10 plaintiff is estopped from contending that Alpha infringes the '608  
11 and '073 patents.

12 Alpha's Counterclaim

13 Further responding to the Amended Complaint, and as a  
14 counterclaim to the matters set forth therein Alpha alleges as  
15 follows.

16 16. This counterclaim is asserted against  
17 plaintiff/counterdefendant by defendant/counterplaintiff, Alpha, and  
18 arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and  
19 2202 and under 28 U.S.C. § 1338(a). There is a justiciable  
20 controversy concerning the validity, enforceability and infringement  
21 of U.S. Patent Nos. 4,396,608 and 4,499,073 as set forth in the  
22 Amended Complaint and in the Answer to which this Counterclaim is  
23 appended.

24 17. On August 2, 1983, U.S. Patent No. 4,396,608 was issued.

25 18. On February 12, 1985, U.S. Patent No. 4,499,073 was  
26 issued.

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1        19. Plaintiff claims to be the present owner of all right,  
2 title and interest in and to U.S. Patent Nos. 4,396,608 and  
3 4,499,073, including the right to sue and recover damages for  
4 infringement.

5        20. Plaintiff has asserted that products manufactured, used or  
6 sold by Alpha in the United States are an infringement of U.S.  
7 Patent Nos. 4,396,608 and 4,499,073.

8        21. On information and belief, U.S. Patent Nos. 4,396,608 and  
9 4,499,073 are invalid and void under the provisions of Title 35  
10 U.S.C. and are unenforceable, as set forth in the Affirmative  
11 Defenses of the Answer to which this Counterclaim is appended, all  
12 which are incorporated herein by reference.

13        22. Defendant has not infringed nor is it infringing U.S.  
14 Patent Nos. 4,396,608 and 4,499,073.

15        23. Therefore, there exists an actual controversy between the  
16 parties as to the validity and infringement of U.S. Patent Nos.  
17 4,396,608 and 4,499,073 with respect to which defendant, Alpha,  
18 requests a declaratory judgment in its favor.

19

20        WHEREFORE, defendant Alpha Therapeutic Corporation prays for  
21 judgment:

22        A. Dismissing the Amended Complaint with prejudice;

23        B. Adjudging that U.S. Patent No. 4,396,608 and every claim  
24 therein, is invalid and unenforceable;

25        C. Adjudging that U.S. Patent No. 4,499,073 and every claim  
26 therein, is invalid and unenforceable;

27        ////

28        ////

1 D. Adjudging that defendant Alpha Therapeutic Corporation has  
2 not infringed, induced infringement, or contributed to the  
3 infringement of any claim of U.S. Patent No. 4,396,608.

4 E. Adjudging that defendant Alpha Therapeutic Corporation has  
5 not infringed, induced infringement, or contributed to the  
6 infringement of any claim of U.S. Patent No. 4,499,073.

7 F. Enjoining Miles Inc., its officers, agents, servants,  
8 employees and attorneys, and those in active concert or  
9 participation with them, from making any threats, charges or  
10 assertions relating to any alleged infringement of U.S. Patent No.  
11 4,396,608 or U.S. Patent No. 4,499,073, and from instituting any  
12 action for infringement of either of said patents against defendant  
13 Alpha Therapeutics Corporation or anyone in privity with them,  
14 including their agents, customers or suppliers; and

15 G. Granting to defendant Alpha Therapeutic Corporation such  
16 other and further relief as may be deemed proper, including all  
17 costs and disbursements associated with this action, together with  
18 reasonable attorney fees.

19 ALPHA THERAPEUTIC CORPORATION

20  
21 By: 

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Attorneys for Defendant  
Alpha Therapeutic Corporation



CERTIFICATE OF SERVICE

We hereby certify that copies of ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS OF ALPHA THERAPEUTIC CORPORATION TO THE AMENDED COMPLAINT FOR PATENT INFRINGEMENT were served this ~~21st~~ 24th day of July, 1992, by first class mail, postage prepaid, upon:

Albert J. Hillman, Esq.  
TOWNSEND & TOWNSEND  
Steuart Street Tower  
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ALPHA THERAPEUTIC CORPORATION

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